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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ALPHA & OMEGA SEMICONDUCTOR,  
 INC., a California corporation; and  
 ALPHA & OMEGA SEMICONDUCTOR,  
 LTD., a Bermuda corporation,

Plaintiffs and Counterdefendants,

v.

FAIRCHILD SEMICONDUCTOR  
 CORPORATION, a Delaware corporation,  
 Defendant and Counterclaimant.

Case No. C 07-2638 JSW (EDL)  
 (Consolidated with Case No. C 07-2664 JSW)

**JOINT MOTION FOR AN ORDER  
 GRANTING LEAVE TO DESIGNATE UP  
 TO SEVENTEEN TERMS, PHRASES OR  
 CLAUSES FOR CLAIM  
 CONSTRUCTION AND [PROPOSED]  
 ORDER**

AND RELATED COUNTERCLAIMS.

Pursuant to this Court's Standing Order for Patent Cases and Civil L.R. 7-11(b), plaintiffs and counterdefendants Alpha & Omega Semiconductor, Ltd. and Alpha & Omega Semiconductor, Inc. (collectively, "AOS") and defendant and counterclaimant Fairchild Semiconductor Corp. ("Fairchild") hereby jointly submit this stipulated motion respectfully requesting leave to designate up to a total of seventeen terms, phrases or clauses for claim construction.

**I. INTRODUCTION**

Before the Court are two separate patent infringement actions relating to semiconductor devices, one action involving three patents asserted by AOS against Fairchild and the other action involving six patents asserted by Fairchild against AOS and both actions including claims for declaratory judgment. The actions were consolidated on July 31, 2007. Although the patents all relate to semiconductor technology, they cover distinct technologies within the semiconductor field, and have been asserted against a wide variety of products and methods. Collectively, the parties have asserted 109 patent claims in these actions, including 16 independent claims. Thousands of distinct products are accused of infringement.

The Standing Order of the Court provides that the Court will construe no more than 10 terms, phrases or clauses in a given patent case. In their initial exchange, the parties collectively proposed almost 40 terms for construction. Since then, the parties have met and conferred on several occasions to narrow the list and find common ground. The meet and confer process is ongoing, but it now appears that it will not be possible to reduce the number of terms in dispute below 17, without giving up potentially dispositive positions on infringement and/or validity. In other words, the parties believe that there are approximately 17 disputed terms which are likely to be dispositive with respect to at least some devices and/or methods for at least one asserted patent claim. Other methods of limiting the claims would be ineffective in reducing the number of disputed terms. Because no other methods will reduce the number of disputed terms, the parties respectfully request the Court grant leave to designate up to 17 terms, phrases or clauses for construction.

In addition, the parties have discussed the possibility of using a Special Master to handle claim construction if the Court would find that helpful. In this regard, the parties are willing to have the Court refer claim construction to a mutually agreeable Special Master.

## II. BACKGROUND AND ARGUMENT

### A. The Consolidation of Two Separate Patent Infringement Actions

On May 17, 2007, AOS filed the above-captioned suit, alleging patent infringement by Fairchild of U.S. Patents No. 5,907,776 ("the '776 patent") and 5,767,567 ("the '567 patent"). On Sept. 28, 2007, pursuant to a stipulated order, AOS filed an amended complaint in which it additionally asserted U.S. Patent No. 5,930,630 ("the '630 patent"). AOS has asserted 22 patent claims including 5 independent claims.

On May 18, 2007, Fairchild filed a separate suit against AOS, *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et. al*, Case No. 07-2664, alleging patent infringement by AOS of U.S. Patents No. 6,429,481 ("the '481 patent"), 6,710,406 ("the '406 patent"), 6,521,497 ("the '497 patent"), and 6,828,195 ("the '195 patent"). On Sept. 28, 2007, pursuant to a stipulated order, Fairchild filed amended counterclaims in which it additionally asserted U.S. Patents No. 7,148,111 ("the '111 patent"), and 6,818,947 ("the '947 patent"). Fairchild has asserted a total of 87 patent claims for these patents, including 11 independent claims.

On June 15, 2007, pursuant to an Administrative Motion to Consider Whether Cases Should be Related, this Court issued an order deeming the two cases to be related within the meaning of Civil Local Rule 3-12 and the later-filed Fairchild action was reassigned to this Court. To promote judicial economy, the parties filed a stipulated motion to consolidate the cases, pursuant to which the Court consolidated the two actions on July 31, 2007.

### B. The Varied Technology of the Patents and the Accused Products

Although all the patents-in-suit relate to semiconductor device technology, they involve distinct technologies within that field. Generally, the patents are directed to different aspects of power "MOSFET" ("metal oxide semiconductor field effect transistor") devices. Power MOSFET devices come in various configurations, including "planar" and "trench." Certain of the patents-in-suit are being asserted against certain of these designs. Some of the patents are directed to different steps of the manufacturing process than others. In addition, power MOSFET devices typically have an "active area" where the main current flows through the device and a "termination region" surrounding the active area. Some of the patents-in-suit are principally concerned with structures in the active area

1 and one is principally concerned with structures in the termination region. Finally, after a power  
2 MOSFET device is fabricated it needs to be “packaged.” One of the patents in suit is directed to a  
3 method of packaging power MOSFET devices. Because these technologies are very different it is not  
4 reasonably possible to eliminate claim terms without eliminating potentially dispositive issues from  
5 the case.

6 Moreover, the present litigation involves thousands of accused products, and many of the  
7 differences between the products present different infringement issues implicating different claim  
8 terms. Although the parties have been diligently negotiating a stipulation to address this aspect of the  
9 case by selecting “representative parts” for use in discovery and trial, the use of representative parts  
10 for discovery purposes does not effectively reduce the number of claim terms to be construed.

11 **C. The Parties' Efforts to Resolve Claim Construction Disputes**

12 In recognition of this Court's Standing Order and in a desire to streamline as much as possible  
13 the issues that the Court will have to resolve, the parties attempted exhaustively to minimize the  
14 number of claim terms requiring construction by the Court. The parties exchanged lists of proposed  
15 claim terms, phrases and clauses for construction pursuant to Patent L.R. 4-1 on December 20, 2007,  
16 pursuant to which AOS proposed 19 terms and Fairchild 26 terms for construction. The parties met  
17 and conferred with respect to reducing the number of claim terms for which the parties would  
18 exchange preliminary claim constructions , and ultimately agreed on 37 terms. The parties each  
19 served Preliminary Claim Constructions pursuant to Patent L.R. 4-2(a) on January 9, 2008, which are  
20 attached hereto as Attachment A and B. None of the initial constructions were identical.

21 The parties have held four lengthy telephone conferences to discuss claim construction and to  
22 negotiate the disputed claim constructions. The parties discussed and negotiated every disputed claim  
23 construction on multiple occasions, and have either arrived at mutually agreeable constructions or  
24 agreed not to seek construction for approximately 23 of the terms. However, it now appears that  
25 construction of about 17 key claim terms will continue to be disputed by the parties.

26 **D. The Remaining Claim Construction Disputes**

27 The parties believe the 9 patents and 109 asserted claims cannot be fairly adjudicated based on  
28 the construction of only 10 terms. The parties believe the number of disputed claim terms, phrases or

1 clauses can be reduced to 17, but not likely any less than 17. The parties also believe that the meaning  
2 ascribed to each of the disputed terms is likely to be outcome dispositive with respect to infringement  
3 and/or validity for at least one or more claims, and with respect to at least some of the parties' products  
4 and methods.

5 Other methods of limiting the claims at issue would be ineffective. For example, the selection  
6 of representative claims would be ineffective -- all but one of the currently disputed claim terms are  
7 contained in different independent claims, all but eliminating any opportunity to select representative  
8 claims to reduce the number of claim terms. Furthermore, the claim terms in dispute are generally  
9 evenly divided between AOS's asserted patents and Fairchild's asserted patents, and no more than four  
10 claim terms are in dispute for any one patent. Further grouping of claims by issues presented would  
11 also be ineffective, because the parties have already done so to the extent possible - each of the  
12 disputed terms represents a separate and distinct dispute.

### 13 **III. CONCLUSION**

14 The parties respectfully request that the Court grant the parties' joint request to designate  
15 additional terms for the reasons explained herein. As mentioned above, the parties would consider the  
16 use of a mutually agreeable Special Master with respect to claim construction in the event the Court  
17 deems it desirable to do so.

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1 Dated: January 17, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

2  
3 By: /s/ Eric P. Jacobs

Eric P. Jacobs

4 Defendant and Counterclaimant

5 FAIRCHILD SEMICONDUCTOR CORPORATION

6 Dated: January 17, 2008

MORGAN, LEWIS & BOCKIUS LLP

7  
8 By: /s/ Brett M. Schuman

9 Brett M. Schuman

10 Attorneys for Plaintiffs and Counterdefendants

11 ALPHA & OMEGA SEMICONDUCTOR, LTD., and

12 ALPHA & OMEGA SEMICONDUCTOR, INC.

**GENERAL ORDER ATTESTATION**

I, Eric P. Jacobs, am the ECF user whose ID and password are being used to file this JOINT MOTION FOR AN ORDER GRANTING LEAVE TO THE PARTIES TO DESIGNATE UP TO SEVENTEEN TERMS, PHRASES OR CLAUSES FOR CLAIM CONSTRUCTION AND [PROPOSED] ORDER. In compliance with General Order 45,X.B., I hereby attest that Brett M. Schuman has concurred in this filing.

/s/ Eric P. Jacobs  
Eric P. Jacobs

**[PROPOSED] ORDER**

Having considered the parties' Joint Motion for an Order Granting Leave to the Parties to Designate Up to Seventeen Terms, Phrases or Clauses for Claim Construction, and good cause appearing therefor,

The Court hereby orders that the motion be granted, and grants leave to the parties to designate up to seventeen terms, phrases or clauses for construction by the Court.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE JEFFREY S. WHITE  
United States District Court Judge

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